



September 19, 2016

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

Re: Notice of *Ex Parte* Presentation, CG Docket No. 02-278, specifically the Broadnet Ruling

Dear Ms. Dortch:

This *Ex Parte* Notice relates to a meeting on September 15, 2016 between myself and Julie Murray, an attorney with Public Citizen, and the following FCC staff: David Gosset, Richard Mallen and Scott Noveck of the Office of General Counsel; Kurt Schroeder, Mark Stone, Kristi Thornton, Micah Caldwell, John B. Adams and Alison Kutler of the Consumer and Governmental Affairs Bureau; and Antonio Sweet and Henning Schulzrinne of the Office of Strategic Planning. Robert Biggerstaff, an expert in technology and the Telephone Consumer Protection Act (TCPA), also attended the meeting.

During this meeting we discussed all of the issues covered in the National Consumer Law Center's (NCLC) Reply Comments in furtherance of a Petition for Reconsideration of the Broadnet Ruling filed on September 15, 2016, by NCLC and 50 other organizations. These comments, filed with the FCC, can be found here:

<https://ecfsapi.fcc.gov/file/109151530205332/NCLC%20Broadnet%20Reply%20Comments%20Sept15.pdf>.

In addition to the matters covered in the Reply Comments, we discussed the question of whether government contractors using autodialers to call wireless telephones for the government would face additional incremental costs to ensure those calls were free to end user (FTEU). We pointed out that at this point it is not clear what fees service providers would charge, but that it is likely there would be an offset of substantial savings for callers currently employing live—manual—calling to reach cell phones when they transition to autodialers. The current system has high wage costs compared to robocalls costing less than a penny to make.

Estimates indicate that approximately 76 million Americans, just over a third of U.S. cell phone owners, use limited minute prepaid plans¹ or maintain essential telephone service through the federal Lifeline Assistance

¹ The research firm Ovum has stated that it expects the number of American prepaid customers to increase to twenty-nine percent of overall wireless subscribers by the year 2016. See Brian X. Chen, Prepaid Cellphones Are Cheaper. Why Aren't They More Popular?, New York Times (Aug. 2, 2012), available at <http://bits.blogs.nytimes.com/2012/08/02/prepaid-phone-plans/>. Marrying that statistic to the Pew Research Center's estimate that, as of October 2014, cell phone ownership among adults was approximately 90 percent means that roughly 218,223,738 million adults own cell phones. See Pew Research Center, Mobile Technology Fact Sheet, available at <http://www.pewinternet.org/fact-sheets/mobile-technology-fact-sheet/>. Twenty-nine percent of that number is 63,284,884 – which is our estimate of the number of cell phone users who have prepaid phones. Added to the

Program,² which permits only 250 minutes a month for the entire household.³ Any unwanted calls would be difficult for households struggling to afford essential telephone service. Unwanted calls use up the minutes on which the entire household depends to access health care, transportation and other essential services, to find jobs or accept work assignments, to respond to family emergencies, to call police or fire departments, and to avoid social isolation.

All calls cost something to make. At our meeting the issue was raised of who should bear the burden of those costs. We posit that there will be little, if any, additional costs from requiring that government contractors use FTEU technology to make limited calls without consent. But to the extent there is some additional cost, low-income people relying on limited-minute cell phones should not have to bear the burden of paying them.

The TCPA is a consumer protection statute. The Commission is charged with regulating under it *to protect consumers*. When Congress enacted the TCPA, it stressed both privacy concerns and the costs imposed on cell phone users.⁴ If the test is between the government paying for these calls versus the called parties, the consumer protection purposes of the TCPA dictate that the government should pay. However, we do not believe the extra costs, if any, of requiring the FTEU technology as compared to what contractors are now using will be significant.

If there are any questions, please contact Margot Saunders at the National Consumer Law Center (NCLC), msaunders@nclc.org (202 452 6252, extension 104).

This disclosure is made pursuant to 47 C.F.R. §1.1206.

Thank you very much.

Sincerely,

/s/

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estimated 13 million Americans who maintain essential telephone service through the Lifeline program, this works out to over 76 million Americans. See Universal Service Administrative Company, LI08 Lifeline Subscribers by State or Jurisdiction - January 2015 through December 2015, available at <http://www.usac.org/about/tools/fcc/filings/2016/q2.aspx>.

² *In re* Lifeline and Link Up Reform and Modernization, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, FCC 15-71, WC Docket Nos. 11-42, 09-197, 10-90, ¶ 16 (Rel. June 22, 2015).

³ See Universal Service Administrative Company, LI08 Lifeline Subscribers by State or Jurisdiction - January 2015 through December 2015, available at <http://www.usac.org/about/tools/fcc/filings/2016/q2.aspx>.

⁴ S. Rep. 102-178, at 5 (1991), reprinted in 1991 U.S.C.A.N. 1968, 1969 (“unsolicited calls placed to fax machines, and cellular or paging telephone numbers often impose a cost on the called party (fax messages require the called party to pay for the paper used, cellular users must pay for each incoming call, and paging customers must pay to return the call to the person who originated the call”), 1972-1973.